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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)**

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In re C.C., a Person Coming Under  
the Juvenile Court Law.

C060949

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD227070)

Plaintiff and Respondent,

v.

R.M.,

Defendant and Appellant.

R.M. (appellant), the mother of the minor C.C. (born September 2003), appeals from the juvenile court's order denying her petition for modification. (Welf. & Inst. Code, §§ 388, 395.)<sup>1</sup> She contends the juvenile court erred in denying the petition for modification without conducting an evidentiary hearing. We shall affirm.

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

## **FACTUAL BACKGROUND**

The minor was born with cyanotic congenital heart disease and had open heart surgery at Stanford University Hospital in 2004. In February 2008, a social worker visited the minor's home in response to an anonymous report that she had an untreated rash with open sores on the chest, was often locked in a room which smelled of ammonia and urine, could not speak, and that the parents used methamphetamine and maintained a filthy home.

The home was dirty and cluttered, with old and rotten food piled up in the kitchen, and an overturned cat litter box. There was a lock on the outside of the minor's bedroom door, but the room did not smell of urine or ammonia. After a visit the next day found clutter remained in the kitchen and parents' bedroom, the Sacramento County Department of Health and Human Services (DHHS) filed a dependency petition, alleging jurisdiction under section 300, subdivision (b) (failure to protect).

The house was still cluttered with old food, debris, and cigarette butts the following week. Three days later, a social worker discovered cat feces on the minor's bedroom floor, numerous cigarette butts, and a bottle of alcohol and containers of toxic chemicals which were accessible to the minor. The minor was placed in protective custody and subsequently detained in March 2008.

Appellant told a social worker she bathed the minor but did not brush her teeth on a regular basis. Appellant first used methamphetamine in 1998, and is a regular user who last took it in January 2008. Appellant has severely decayed teeth associated with long-term methamphetamine use. When she smoked the drug with the father, the minor was outdoors or in the living room. The parents gated the kitchen because it was a potential danger zone to the minor when they smoked methamphetamine.

Appellant admitted to smoking methamphetamine while pregnant with the minor. The parents regularly smoked cigarettes in the house, which appellant claimed did not seem to bother the minor. She did not read to the minor, whom she admitted spoke only a few words.

The social worker observed the minor could only say the word "look" during the visit, otherwise screaming and muttering to get attention. The minor's clothes were stained; she had food all over her face, ratted hair, and dirt under her fingernails. At another unannounced visit, the minor had brown dirt and caked food on her face, her pajamas did not appear to have been washed for some time, her nails were filled with dirt, and she could again only say the word "look." The minor appeared unkempt and unfed on numerous occasions.

The minor was similarly unkempt when she was detained three days later. She also had a thick scratch on the right temple and a scar on her upper right arm. The minor had a foul body

odor as if she had not bathed in some time. She neither screamed nor reached out when removed from appellant's custody, and was happily playing at the foster parents' home later that day.

Appellant's first child was detained shortly after his birth in June 2000. She admitted smoking methamphetamine while pregnant, and the home was filthy and lacked baby supplies. Appellant was given a case plan which included parenting classes, drug testing, individual substance abuse counseling, a psychological evaluation, and visitation. Reunification services were eventually terminated, and parental rights were terminated in June 2001.

Appellant has prior child welfare referrals for the minor. In September 2003, there was a substantiated referral for general neglect based on appellant passing out and sleeping all night without feeding the minor, the minor exhibiting withdrawal symptoms, and appellant appearing delayed and lacking provisions to care for the minor. The minor was returned to the parents, who took substance abuse and parenting classes, while seeking adequate housing and medical treatment for the minor's heart condition. While the parents ultimately denied drug use, both tested positive for methamphetamine and expressed resistance to completing substance abuse treatment.

A neighbor told a social worker that in March 2007, she found the minor wandering the streets in dirty pajamas at

6:00 a.m. After getting the minor from the neighbor, appellant smacked the minor on the leg, saying "you're a bad baby."

In a March 2008 interview, the foster mother related that the minor could only say the word "look," and was very aggressive to the family's dogs and 19-month-old child. She refused to eat at the table, only ate while walking, and would get upset if her plate was not full. In addition to being nonverbal, the minor was not toilet-trained.

The foster mother said the minor had no sense of fear in public. Appellant and the father both said the minor often climbed onto the roof of the house next door.

The minor was diagnosed with moderate mental retardation, mixed receptive expressive language disorder, adjustment disorder with mixed disturbance of emotion and conduct, and a history of abuse and neglect. She had been referred to ALTA California Regional Center in 2005, but the case was closed after appellant did not show up for appointments. Appellant told a social worker she did not follow through with ALTA services because she thought they were unnecessary.

The juvenile court sustained the petition in July 2008.

At the contested dispositional hearing in July 2008, appellant presented evidence she completed parenting classes. A May 2008 letter from a Strategies for Change counselor said appellant "participates actively in groups; and appears to provide valuable insight and support to other members of the

group," is "open, honest, and has a positive attitude." Appellant was projected to graduate from the program in October 2008.

According to a recovery specialist at the STARS program, appellant entered the program in March 2008 and was sent to Strategies for Change. Appellant never missed her twice-weekly meetings with the specialist, was always early for her treatment, receptive to treatment, and delighted to be there. A social worker testified that appellant had consistently tested negative for drugs and had not missed a test.

The juvenile court denied services pursuant to section 361.5, subdivision (b), subparts (10) (prior termination of services for half sibling), (11) (prior termination of parental rights for half sibling), and (13) (history of drug abuse and resisted court-ordered treatment). Appellant appealed the juvenile court's orders, which we affirmed in an unpublished opinion. (*In re C.C.* (July 29, 2009, C059744) [nonpub. opn.]..)

DHHS filed a prepermanency review report in November 2008. The minor was adjusting very well to her foster home placement. She bonded with her foster parents and interacted very positively with the foster mother. The minor was thriving due to the daily influence of the older children in her foster family, who consistently encouraged her to express herself verbally. The foster parents reported a noticeable change in the minor's behavior; the constant positive attention and

physical contact resulted in her becoming more relaxed and less aggressive.

A June 2008 neurological exam showed abnormal brain pathways, which indicated the minor was exposed to drugs and alcohol in the uterus. More testing was needed to determine if the minor could ever speak in full sentences. A heart murmur was detected in October 2008, and in June 2008, a dentist determined that the minor would have to be placed under anesthesia in order to treat her numerous and severe cavities.

The minor still displayed developmental delays. Her vocabulary was still limited to a few words like "look," "bye," and "no"; she used a variety of grunts and squeals to get what she needs. She was continuing to learn sign language and could communicate somewhat with her foster parents by using signs. The minor was now toilet trained, having been taught by her foster parents to signal with her hands when she had to go to the bathroom. The foster mother estimated that the minor's development had progressed from 18 months when they got her to two to three years old.

With the foster mother's help, the minor was able to get special education services through ALTA Regional. She was attending school and enjoyed learning, showing progress in attempting speech, following classroom routines, and social and emotional growth. Her teacher said the minor was thriving in the small classroom, but showed more challenging behavior on the days following visits from her parents.

During her visits with the minor, appellant encouraged her to engage in "rough housing," which increased her aggressive behavior. The foster parents reported the minor is irritable and combative to the foster family after visiting appellant. Appellant was admonished to stop this inappropriate behavior, but continued to require admonishment in subsequent visits.

The father tried to nurture the minor during his visits. However, after the parents fought during one visit, the father walked out, saying "I'll be glad when this is over with." Appellant became particularly aggressive with the minor during this visit, requiring much redirection. As a result, the minor became more aggressive as well. The social worker subsequently requested appellant's visits be suspended to give the school and foster parents time to stabilize the minor.

Appellant told a social worker she moved out of the father's home, but refused to divulge her new address, saying the social worker could get it from the father. The father expressed defensiveness about counseling and believed it would not benefit him. The report concluded that the minor should not be returned to the father because he had not completed services and was resistant to counseling, but services should be continued.

Appellant filed a section 388 petition for modification in November 2008, seeking reunification services. The petition contained attachments alleging appellant had completed her drug treatment course with Strategies for Change in October 2008.



She had drug treatment twice a week there, and attends Narcotics Anonymous (NA) three times a week. The attachment also alleged appellant has had an NA sponsor for three months, tested for drugs through MAAP [Mexican American Alcoholism Program] for three months with all clean results, and "has been clean since March 4, 2008."

Another attachment alleged the family was in reunification with the father being offered services, and that both parents maintained hopes of raising their child as a family. As the minor received many services and suffers from retardation, the petition asserted that reunification services are necessary to make appellant aware of what is required to safely care for the minor. Also, appellant alleged reunification services would help to ensure healthy visits between appellant and the minor. The petition included a letter from appellant's sponsor, who stated appellant is "a pleasure to work with," regularly attends the meetings, is working through the steps of her program, and has "a strong willingness to live a clean life and do whatever it takes to stay clean."

Appellant asked the juvenile court for a trial on the section 388 petition. At a December 2008 hearing, she asserted that having completed a substance abuse treatment program, regularly attending a 12-step program, and testing negative for drugs demonstrated a change in circumstances. In light of appellant maintaining visitation, the father receiving services,

and appellant's success with her own services, she argued reunification services were in the minor's best interest.

The juvenile court found that the three months of negative tests through MAAP was too short a period, and there was no other evidence of her not using drugs except for the general allegation that she has been clean since March. It denied the petition without prejudice, finding insufficient evidence of either a change in condition or that services would be in the minor's best interests.

### **DISCUSSION**

Appellant contends the juvenile court erred by denying her a hearing on her request to modify its previous order denying reunification services. We disagree.

Section 388, subdivision (a), provides in pertinent part: "Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . The petition shall be verified and . . . shall set forth in concise language any change of circumstance or new evidence which are alleged to require the change of order . . . ." "If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . . ." (\$ 388, subd. (d).)

Section 388 gives the court discretion whether to grant a hearing on a modification petition. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460-461.) "The court may deny the petition ex parte if: [¶] [t]he petition filed under section 388[, subdivision] (a) . . . fails to state a change of circumstance or new evidence that may require a change of order . . . or, that the requested modification would promote the best interest of the child." (Cal. Rules of Court, rule 5.570(d)(1).)

The petitioner must make a prima facie showing to trigger the right to proceed by way of a full hearing. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) "The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) The juvenile court may consider "the facts established as without dispute by the court's own file" in determining whether a prima facie showing has been made that a modification would be in the minor's best interests. (*In re Angel B., supra*, 97 Cal.App.4th at p. 461.) A petition for modification "must be liberally construed in favor of its sufficiency." (*In re Edward H.* (1996) 43 Cal.App.4th 584, 592 (*Edward H.*)).

The best interests of the child are of paramount consideration when a petition for modification is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) In assessing the best interests of

the child, the juvenile court looks to the needs of the child for permanence and stability. (*Ibid.*)

Appellant argues her petition presented a prima facie case that she had been sober from March 4, 2008, to the date of the hearing on her petition, a period of nine months. The section 388 petition alleges only that appellant tested clean for three months with MAAP, she had completed the Strategies for Change rehabilitation program on October 3, 2008, and makes an unsupported allegation that she had been clean from drugs since March 4, 2008. When asked by the juvenile court about this last allegation, appellant's counsel replied that she was not the attorney who prepared the section 388 petition and has not spoken with appellant, but it was counsel's understanding "that this information is based on her participation in Strategies for Change as well as MAAP."

"[A] 'prima facie' showing is not an invitation to section 388 petitioners to play 'hide the ball' in pleading changed circumstances or new evidence. A 'prima facie' showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited. [Citation.] If a petitioner could get by with general, conclusory allegations, there would be no need for an initial determination by the juvenile court about whether an evidentiary hearing was warranted. In such circumstances, the decision to grant a hearing on a section 388 petition would

be nothing more than a pointless formality." (*Edward H., supra*, 43 Cal.App.4th at p. 593.)

"Section 388 and the pertinent rule of court [citation] require that the petition itself demonstrate that the prior order should be altered. [Citation.] This standard would not be satisfied if the petition were allowed to consist of general averments rather than specific allegations describing the evidence constituting the proffered changed circumstances or new evidence." (*Edward H., supra*, 43 Cal.App.4th at p. 593.)

Appellant's allegations do not support either a change in circumstances or that services would be in the minor's best interests. Appellant has a history of drug abuse and resisting treatment. Although she has completed the Strategies for Change program, actively participates in NA, and tested clean for three months, her assertion that she has not used drugs since March 2008 is an unsupported allegation that the juvenile court did not need to credit.

Appellant presented a substantial danger to the minor before the dependency action. There is evidence in the record that drug and alcohol use during pregnancy is at least partially responsible for the minor's profound difficulties with speaking. While in the parents' care, the minor sustained cavities so numerous and severe as to require her to be placed under anesthesia to treat. Appellant never utilized the services offered for her special needs child, and she and the father maintained an unsafe, dirty home.

Appellant's petition did not allege any other changes in behavior indicating that providing her with reunification services is in the minor's best interest. Her refusal to tell the social worker her new address demonstrates an unwillingness to cooperate with DHHS. Appellant also consistently displayed inappropriate behavior on her visits in spite of persistent admonitions. Appellant's behavior at the visits was so detrimental to the minor that the social worker recommended suspending visitation until the school and foster parents stabilized the minor.

Although appellant has tried to change, the changes alleged in the section 388 petition are too late (see *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 601) and could not support a finding that granting the petition would be in the minor's best interests. In light of the many dangers appellant posed to the minor, the minor's heightened needs, and appellant's continued inappropriate behavior, the juvenile court was well within its discretion to deny the section 388 petition without an evidentiary hearing.

#### **DISPOSITION**

The juvenile court's order denying the section 388 petition is affirmed.

\_\_\_\_\_, BUTZ, J.

We concur:

\_\_\_\_\_, RAYE, Acting P. J.

\_\_\_\_\_, CANTIL-SAKAUYE, J.